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20 KINGSBOROUGH ATLAS TREE SURGERY, INC.

21

22 UNITED STATES BANKRUPTCY COURT  
23 NORTHERN DISTRICT OF CALIFORNIA

24 In Re:  
25 Kingsborough Atlas Tree Surgery, Inc.  
26 Debtor.

27 Case No. 25-10088 WJL

28 Chapter 11

19 Kingsborough Atlas Tree Surgery, Inc.  
20 Plaintiff,  
21 vs.  
22 Anvil Power, Inc., a California corporation,  
23 Anvil Equipment Company LP, a  
24 California limited partnership, Anvil  
25 Builders, a California corporation, Anvil  
Holdings, Inc., a California corporation,  
Anvil Group, LLC, a California limited  
liability company,  
26 Defendants.

AP No.

**COMPLAINT TO COMPEL TURNOVER  
OF PROPERTY OF THE ESTATE  
PURSUANT TO 11 U.S.C. §542(a)**

27

28

CARLE, MACKIE,  
POWER & ROSS LLP

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Case No. 25-10088 WJL  
AP No.

1 COMES NOW, Kingsborough Atlas Tree Surgery, Inc., as and for its Complaint, alleges  
2 and avers as follows:

3 **JURISDICTION AND VENUE**

4 1. On February 20, 2025, Kingsborough Atlas Tree Surgery, Inc. (hereinafter  
5 “KBA,” “Debtor,” or “Plaintiff”) filed its voluntary petition for relief under Chapter 11 of the  
6 Bankruptcy Code of the above-entitled Court. KBA is a debtor in possession.

7 2. This Court has subject matter jurisdiction over this adversary proceeding pursuant  
8 to 28 U.S.C. §§ 1334 and 157. Venue is proper here pursuant to 28 U.S.C. § 1409.

9 3. Plaintiff is informed and believes and on that basis alleges that this matter is a  
10 “core proceeding” as defined by 28 U.S.C. § 157(b)(2)(A) and (E). Alternatively, KBA consents  
11 to final judgment of the Bankruptcy Court pursuant to the provisions of 28 USC § 157(c)(2).

12 4. This action is brought pursuant to the provisions of 11 U.S.C. §§ 541 and 542 to  
13 recover property of Debtor’s estate.

14 **PARTIES**

15 5. Defendant Anvil Power, Inc. (“Anvil Power”) is a corporation incorporated in the  
16 State of California and doing business in the Northern District of California.

17 6. Defendant Anvil Equipment Company LP (“Anvil Equipment”) is a corporation  
18 incorporated in the State of California and doing business in the Northern District of California.

19 7. Defendant Anvil Builders (“Anvil Builders”) is a corporation incorporated in the  
20 State of California and doing business in the Northern District of California.

21 8. Defendant Anvil Holdings, Inc. (“Anvil Holdings”) is a corporation incorporated  
22 in the State of California and doing business in the Northern District of California.

23 9. Defendant Anvil Group, LLC (“Anvil Group”) is a limited liability in the State of  
24 California and doing business in the Northern District of California. Anvil Power, Anvil  
25 Equipment, Anvil Builders, Anvil Holdings, Anvil Group and all subsidiary and related entities  
26 are herein collectively referred to as “Anvil” or the “Anvil Entities” or “Defendants.”

27 **GENERAL ALLEGATIONS**

28 10. KBA is a Sonoma County based company founded 42 years ago and owned and

1 operated by Richard Kingsborough and Cindy Kingsborough (collectively the “Kingsboroughs”).

2       11.      The Kingsboroughs built KBA into a large and successful company, with hundreds  
3 of employees, that specialized in large scale forest and vegetation management projects state-  
4 wide. With full-time certified arborists and experienced construction crews, KBA developed a  
5 reputation for tackling complex projects, including heavy commercial related work, utility/wood  
6 management, disaster response and forest management.

7       12.      KBA has procured tens of millions of dollars’ worth of third-party contracts with  
8 private and public entities, and it has also invested in millions of dollars’ worth of heavy  
9 equipment, which is the primary subject to this turnover proceeding.

10       13.      On or about June 5, 2023, KBA and the Kingsboroughs entered into a written  
11 agreement, entitled Asset Purchase Agreement, with Anvil Power and Anvil Equipment  
12 (hereinafter the “Agreement”) under which KBA agreed to sell KBA’s assets, including valuable  
13 third-party contracts and equipment and other business assets.

14       14.      In the Agreement, KBA and the Kingsboroughs agreed to sell all of KBA’s and the  
15 Kingsboroughs’ rights, title, and interests in, machinery, tools, vehicles (excluding personal  
16 vehicles), office equipment, and other tangible personal property, wherever located, designated  
17 by written notice from Anvil Equipment, and to deliver, assign, transfer, such property to Anvil  
18 Equipment. Such property is collectively referred to as the “KBA Equipment.”

19       15.      The aggregate purchase price for the KBA Equipment is defined in the Agreement  
20 to be “determined by Buyers and Seller after reviewing the Ritchie Brothers Auctioneers  
21 valuation and the FLV values set forth in the California Bank of Commerce valuation, provided  
22 that the [KBA Equipment purchase price] shall not exceed Thirty Million dollars \$30,000,000.”

23       16.      Under the Agreement, KBA and the Kingsboroughs also agreed to sell to Anvil  
24 Power all of KBA’s and the Kingsboroughs’ right, title, and interest in tangible and intangible  
25 assets, properties, and rights belonging to KBA and the Kingsboroughs, and Anvil Power agreed  
26 to purchase certain other assets, including valuable agreements between KBA and third-parties,  
27 such as PG&E (“Assigned Contracts”), as well as intellectual property (“IP”), and goodwill and  
28 going concern value. In consideration of that purchase, Anvil Power also agreed to assume

1 certain liabilities of KBA; to pay KBA \$690,000, and a percentage of Anvil's net profit from the  
2 certain assigned contracts over a five-year period; and deliver periodic net profit calculations.

3       17.      The Agreement contemplated a formal closing process with a short window after  
4 June 5, 2023, which allowed Anvil to identify and confirm assets Anvil would acquire and  
5 purchase from KBA for a price not to exceed \$30,000,000.

6       18.      KBA has performed under the Agreement, making available for Anvil's use  
7 millions of dollars' worth of heavy KBA Equipment, assigning multiple third-party agreements  
8 to Anvil and otherwise cooperating with Anvil in every regard as required by the Agreement.  
9 Thus, as a result of KBA's performance, over the last 18 months, Anvil has enjoyed all of the  
10 benefits of the Agreement.

11       19.      Anvil has taken possession of tens of millions of dollars' worth of KBA Equipment  
12 and is using such equipment or has possession of such equipment.

13       20.      Anvil has failed to perform under the Agreement and has denied KBA from  
14 enjoying the primary benefits under the Agreement, including Anvil's completion of the  
15 purchase of the KBA Equipment and payment of a percentage Anvil's net profits generated from  
16 the several third-party contracts KBA assigned to Anvil, including the PG&E contract. These  
17 benefits promised by Anvil were and are the primary inducement for KBA to enter into the  
18 Agreement with Anvil.

19       21.      The Agreement requires Anvil to identify the equipment it shall acquire for its use  
20 and to pay for such equipment.

21       22.      Anvil, however, has taken and retained possession of the KBA Equipment without  
22 paying for it. Anvil has since, after the fact, offered to pay rent on said equipment, and to  
23 mitigate its damages, KBA has agreed to accept rental payments. Anvil, has nonetheless,  
24 continued to breach under the Agreement and failed and refused to make any payments to KBA  
25 and continues to wrongfully possess and use the KBA Equipment.

26       23.      On or about January 9, 2025, through counsel, KBA made a demand on Anvil,  
27 among other things, to account for its income and profit from Assigned Contracts, to produce its  
28 books and records as required by the Agreement, to complete the purchase of KBA Equipment

- 1 pursuant to the Agreement or return such equipment to KBA, to make rental payments on such equipment or immediately return such equipment to KBA.
- 2

3 24. On March 4 and March 5, 2025, KBA through counsel reiterated its demand that  
4 Anvil return all KBA Equipment in Anvil's possession custody or control. To date, Anvil has  
5 refused to perform under the Agreement or to return the KBA Equipment in its possession.

6 25. On information and belief, Anvil is now attempting to secret and remove KBA  
7 Equipment to undisclosed locations despite KBA's request that such equipment be returned to  
8 KBA.

## **CLAIM FOR RELIEF**

**(Turnover Of Property Of The Estate Pursuant To 11 U.S.C. §§ 541, 542(a))**

**(Against All Defendants)**

12        26. KBA realleges each and every allegation contained in paragraphs 1through 30 of  
13 this Complaint and, by this reference, incorporates said allegations as though set forth fully  
14 herein.

15        27. The KBA Equipment is property of Debtor's estate, pursuant to, among other  
16 things, 11 U.S.C. § 541, as to which Debtor has a legal or equitable interest as of the  
17 commencement of its bankruptcy proceeding.

18        28. Defendants refuse to turn over to KBA the KBA Equipment which is in their  
19 possession, custody or control, during this bankruptcy case.

20        29. The KBA Equipment is property that KBA, as debtor-in-possession, may use, sell  
21 or lease under 11 U.S.C. § 363.

22        30. The KBA Equipment is property not of inconsequential value or benefit to the  
23 Debtor's estate.

31. Despite demand, Defendants have failed and refused to turn over this property to  
KBA, as debtor in possession.

26        32.        The KBA Equipment is property of the estate pursuant to the provisions of 11  
27 U.S.C. § 541, which Debtor may use, sell, or lease under 11 U.S.C. § 363.

**28** 33. Pursuant to 11 U.S.C. § 542, Defendants, who are in possession of this property,

1 shall deliver this property to the Debtor, and account for, such property or the value of such  
2 property; and shall be subject to a preliminary injunction enjoining the transferring, changing,  
3 disbursing, dissipating, converting, conveying, pledging, assigning, encumbering, or foreclosing  
4 or otherwise disposing of any interest in the KBA Equipment.

5 WHEREFORE, KBA prays for judgment against Defendants as follows:

6 1. Compelling Defendants to turnover the property, KBA Equipment, to KBA;  
7 2. For any such property not turned over to KBA, granting a money judgement  
8 subject to proof;

9 3. Entering an order of preliminarily and permanently enjoining all Defendants and  
10 each of them, and their officers, directors, successors in interest, agents, employees, attorneys in  
11 fact, and all persons acting in concert or participating with them, from directly or indirectly  
12 transferring, changing, disbursing, dissipating, converting, conveying, pledging, assigning,  
13 encumbering, or foreclosing or otherwise disposing of any interest in the property subject to turn  
14 over to Debtor's estate as alleged herein, including the KBA Equipment.

15 4. Awarding costs of suit incurred herein, including reasonable attorneys' fees; and  
16 5. Awarding such other and further relief as the court deems proper.

17 Dated: March 20, 2025

CARLE, MACKIE, POWER & ROSS LLP

18  
19 By:   
20 Philip J. Terry  
Kimberly Corcoran

21 -and-

22 Michael C. Fallon  
23 Michael C. Fallon, Jr.  
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*Attorneys for Plaintiff*